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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,497	05/25/2005	Maria Grazia Canalini	28566/GM/ps	6959

30904 7590 07/12/2007  
MODIANO & ASSOCIATE  
VIA MERA VIGLI I6  
MILAN, 20123  
ITALY

EXAMINER

GEORGE, KONATA M

ART UNIT PAPER NUMBER

1616

MAIL DATE DELIVERY MODE

07/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/536,497	<b>Applicant(s)</b> CANALINI, MARIA GRAZIA	
	<b>Examiner</b> Konata M. George	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16 and 18-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16 and 18-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 16 and 18-30 are pending in this application.

#### ***Action Summary***

1. The examiner acknowledges the cancellation of claim 17. Therefore, any and all objections and/or rejections directed to it is hereby withdrawn.
2. The rejection of claims 29 and 20 under 35 U.S.C. 101 as being directed to non-statutory subject matter is hereby withdrawn as applicant has amended the claims to correct the rejection.
3. The rejection of claims 29 and 30 under 35 U.S.C. 112, second paragraph as lacking steps involved in the method/process claim is hereby withdrawn as applicant has amended the claims to correct the rejection.
4. The rejection of claims 18 and 28 under 35 U.S.C. 112, second paragraph as being indefinite is hereby withdrawn as applicant has amended the claims to correct the rejection.
5. The rejection of claims 16 and 19-27 under 35 U.S.C. 103(a) over Handa in view of Nakagawa et al. and Takasu et al. is being maintained for the reasons stated in the office action dated October 24, 2006.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 16 and 18-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Handa (JP 11-139943) in view of Nakagawa et al. (JP 408048616A) and Takasu et al. (US 5,053,222).

Applicants claim a hair composition comprising green tea, gentian and geranium mixed with a solution medium.

***Determination of the scope and content of the prior art***

**(MPEP §2141.01)**

Handa discloses a hair tonic containing a green tea extract, amino acid, vitamins, etc.

***Ascertainment of the difference between the prior art and the claims***

**(MPEP §2141.02)**

Handa does not disclose the tonic comprising gentian or geranium or the claimed concentrations. It is for this that Nakagawa et al. and Takasu et al. are joined.

Nakagawa et al. disclose a hair tonic comprising a green gentian extract, ginseng extract, etc.

Takasu et al. disclose a hair cosmetic composition in the form of tonics, lotions, creams comprising an active ingredient together with other ingredients that can be incorporated in the hair cosmetic. Column 7, lines 12, 13 and 18 teach that geranium, green tea and gentian could be used in the composition. Column 10, lines 9-26 teach testing six tonics for the loss of hair-preventing effects.

***Finding of prima facie obviousness***

***Rational and Motivation (MPEP §2142-2143)***

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Nakagawa et al. and Takasu et al. in the invention of Handa to disclose the claimed invention. Since the references are related as analogous art, i.e. hair care compositions, one of ordinary skill in the art would be motivated to add additional herbal ingredients to Handa as Nakagawa incorporates gentian in a hair care composition and Takasu et al. can incorporate green tea, gentian and geranium in a hair care composition. The expected result would be a hair care composition comprising green tea, gentian and geranium.

***Response to Arguments***

7. Applicant's arguments filed April 20, 2007 have been fully considered but they are not persuasive.

Applicants argue that the applicants' specified ingredients in combination without the prior art essential ingredients are not obvious. The examiner disagrees. Although, the prior art teaches additional ingredients in the composition, the instant invention is not limited to what is claimed. Applicant claim "a hair treatment lotion comprising..." the term "comprising" is open language and does not exclude additional ingredients. Therefore, any composition containing the claimed ingredients plus additional ingredients reads on the claimed invention and is thus obvious.

***Conclusion***

8. Claims 16 and 18-30 are rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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